IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

S.T.Rev.No.12 of 2003

T.A.NO.276/2001 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM.

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REVISION PETITIONER/RESPONDENT/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY DEPUTY COMMISSIONER (LAW) COMMERCIAL TAXES,
ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE:-

M/S. TOP CONSTRUCTIONS,
KOTTARAKKARA.

BY ADV. SRI.S.ABDUL RAZZAK.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 26/07/2007, ALONG WITH S.T.REV.NO.45 OF 2003 & CONNECTED CASES, THE COURT ON THE SAME DA PASSED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

S.T.Rev.Nos.12 of 2003, 45 of 2003,
63 of 2003 & 79 of 2003

Dated, this the 26th day of July, 2007

ORDER

H.L.Dattu,C.J.

Since common questions of fact and law are involved in these revision petitions, they are clubbed together, heard and disposed of by this common order.

(2) These revision petitions are filed by the State Government being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal, Thiruvananthapuram in T.A.Nos.276, 277, 278 and 279 of 2001 dated 30th November, 2001. By the impugned order, the Tribunal has allowed the assessee's appeals and has set aside the orders passed by the Deputy Commissioner of Commercial Taxes in exercise of his powers under Section 35 of the Kerala General Sales Tax Act.

(3) The respondent in these revision petitions is an assessee registered under the provisions of the Kerala General Sales Tax Act ('K.G.S.T.Act" for short) and Central Sales Tax Act ("C.S.T.Act" for short). He is a contractor. For the assessment years 1994-95 and 1995-96, the assessing authority has completed the assessment on 25.2.1999, for the assessment year 1996-97 on 20.7.1999 and for the assessment year 1997-98 on 28.2.2000.

(4) The Deputy Commissioner of Commercial Taxes being of the opinion that the orders of assessment passed by the assessing authority is prejudicial to the interest of the Revenue, had initiated *suo motu* revisional

proceedings by issuing show cause notice to the assessee. The assessee has filed a reply. After considering the reply so filed by the assessee, the revisional authority has revised the orders of assessment passed by the assessing authority for the aforesaid assessment years on 25.06.2001.

(5) Aggrieved by the revisional orders so passed by the Deputy Commissioner of Commercial Taxes, the assessee has carried the matter by way of first appeal before the Tribunal in T.A.Nos.276/2001, 277/2001, 278/2001 and 279/2001 for the assessment years 1994-95, 1995-96, 1996-97 and 1997-98 respectively. The Tribunal by its common order dated 30th November, 2001 has allowed the appeals and thereafter set aside the orders passed by the Deputy Commissioner of Commercial Taxes dated 25.6.2001.

(6) The State Government being aggrieved by the orders passed by the Tribunal has filed these revision petitions under Section 41 of the Act. The questions of law raised by the Revenue for our consideration and decision are as follows:

> "(a) Is not the Tribunal in error in holding that the finding of the First Appellate authority that materials supplied by Government Departments are taxable is wrong?
>
> (b) Is not the Tribunal in error in not considering the fact that the appellant had not adduced any evidence to prove that the materials supplied by the Government Departments have suffered tax?"

(7) At this stage, it may be necessary to notice yet another order passed by the Commissioner of Commercial Taxes, Thiruvananthapuram in exercise of his powers under Section 37 of the Act on 21.2.2003. By the said order, the Commissioner has set aside the orders passed by the assessing authority dated 25.2.1999, 20.7.10999 and 28.2.2000 and also the orders passed by the revisional authority dated 25.6.2001. The order passed by the

Commissioner of Commercial Taxes dated 21.2.2003 is as under:

> "There was no evidence produced for the cost of departmental materials supplied. Therefore the exemption allowed in this respect is wrong. The assessments are to be completed afresh considering the purchase of materials transferred in the execution of Works Contract, for which a detailed verification of accounts are required. The assessments completed for the years 1994-95 to 97-98 and the revision orders mentioned are therefore prejudicial to revenue. All the contentions raised in the reply does not deserve any merit at all. The reply is therefore devoid of merit. As there is escaped turnover for all the years from 1994-95 to 97-98, the assessment orders as well as the revision order passed by the Deputy Commissioner, Kollam u/s.35 of the K.G.S.T.Act 1963 are set aside and the cases are remitted back to the assessing authority for fresh disposal according to law. The assessing authority is directed to finalise the assessments for all the years within 3 months from the date of receipt of this order".

(8) Since the entire assessment orders have been set aside by the Commissioner of Commercial Taxes in exercise of his powers under Section 37 of the Act, at this stage, in our opinion, we need not have answered the questions of law raised by the Revenue for our consideration and decision since the said questions of law are only academic in nature. In that view of the matter, without going into the other details of the case, these revision petitions are disposed of in view of the orders passed by the Commissioner of Commercial Taxes in exercise of his powers under Section 37 of the Act dated 21.2.2003.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-